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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/532,024 03/21/00 OGAWA

A 1417-305

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IM62/0522

EXAMINER

MAI, H

ART UNIT

PAPER NUMBER

1761

DATE MAILED:

05/22/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

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Office Action Summary

Application No.

09/532,024

Applicant(s)

OGAWA ET AL.

Examiner

Hao T Mai

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on 21 March 2000.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☐ Claim(s) 1-9 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) 1-9 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

- 15) ☒ Notice of References Cited (PTO-892)
- 16) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 17) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 18) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 19) ☐ Notice of Informal Patent Application (PTO-152)
- 20) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 102/103

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-3 and 5-7 are rejected under 35 U.S.C. 102(e) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Kaitou et al(6,156,807)(Kaitou). Kaitou teaches a milk beverage(col. 3, lines 37+) having polyglycerol fatty acid ester. Kaitou is silent as to whether or not the polyglycerol fatty acid ester having a cloud point of not less than 90C. However, Kaitou teaches a polyglycerol fatty acid ester having a degree of polymerization of 4 to 15, and a palmitic acid(ex. 2), therefore, inherently it should have the same cloud point. See Ref. Example 2, where the production of decaglycerol stearate is shown and applicants' Table 3.

4. Claims 1 –4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Babayan(4,093,750). Babayan teaches a beverage comprising milk polyglycerol fatty acid ester having a cloud point and a sodium chloride(abstract, ex. 3). Babayan

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teaches all of the claimed limitations except for the specifically claimed cloud point and concentration. However, the specifically claimed cloud point and concentration are not seen to be a patentable distinction, therefore, it would have been obvious to one of ordinary skill in the art to modify the method of Babayan by routine experimentation to arrive at the specifically claimed cloud point and concentration.

Regarding claim 2, see col. 3, lines 15+, tables 1-3.

Regarding claim 3, see col. 3, lines 65+.

1. Claims 5-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Babayan(4,093,750) in view of Talkington et al(4,960,602)(Talkington). Babayan teaches all of the claimed limitations, however, he is silent as to whether or not the sucrose fatty acid contains palmitic acid or stearic acid. Talkington teaches a sucrose fatty acid contains palmitic acid (col. 4, lines 15+). It would have been obvious to one of ordinary skill in the art to add the sucrose fatty acid contains palmitic acid as taught by Talkington, since Talkington teaches that these sucrose has the benefit of providing reduced calorie foods and beverages.

Babayan in view of Talkington teach all of the claimed limitations except for the specifically claimed ratio and percentage of the composition. However, the specifically claimed ratio and percentage are not seen to be a patentable distinction, therefore, it would have been obvious to one of ordinary skill in the art to modify the method of Babayan by routine experimentation to arrive at the specifically claimed ratio and percentage.

Regarding claim 9, see col. 7, lines 60+.

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Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hao T Mai whose telephone number is (703)306-9171. The examiner can normally be reached on 8AM-7PM; MON-THU.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on (703)308-3959. The fax phone numbers for the organization where this application or proceeding is assigned are (703)305-3599 for regular communications and (703)305-7718 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703)308-0661.

hm
May 15, 2001



**CURTIS SHERRER
PATENT EXAMINER**

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